

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW HAMPSHIRE

USA

v.

Civil No. 08-cv-394-JM

R GUNS Model 44,  
7.62 x 54 caliber rifle,  
Serial Number 11844;

Winchester, Model 1300,  
12 caliber shotgun,  
Serial Number L3580523;

Sturm Ruger, Model MINI 12,  
223 caliber rifle,  
181-99128;

Sturm Ruger, Model 10/22,  
22 caliber rifle,  
Serial Number 350-62131;

Walther, Model P22,  
22 caliber pistol,  
Serial Number L010173;

Berretta, Pietro S.P.A.,  
Model CX4 Storm, 9 caliber rifle,  
Serial Number CX04102;

Servu Forearms, Model BFG50,  
50 BMG caliber rifle,  
Serial Number 1253;

Century Arms International,  
Model L1A1 Sporter, 308 caliber rifle,  
Serial Number 104090;

Century Arms International,  
Model L1A1 308 caliber rifle,  
Serial Number AD6215176;

Harrington and Richardson Model 088,  
16 caliber shotgun,  
Serial Number 9300371;

Norinco, Model MAK90,  
762 caliber rifle,  
Serial Number 9300371;

Norinco, Model MAK90,  
762 caliber rifle,  
Serial Number 9475459;

Arsenal Co. Of Bulgaria, Model SLR95,  
762 caliber rifle,  
Serial Number IM371098;

Serbu Firearms, Model BFG50,  
50 BMG caliber rifle,  
Serial Number 1292

### **O R D E R**

The government moved for "Partial Judgment on the Pleadings and/or for Partial Summary Judgment" (document no. 33). The "Objection" (document no. 36) relies upon six documents which raise matters outside the pleadings. The surreply raises the need for discovery (document no. 40). Under Fed. R. Civ. P. 12(d) "proper course for the district court (is) to convert the motion into one for summary judgment." See DeMayo v. Nugent, 517 F.3d 11, 19 (1<sup>st</sup> Cir. 2008). I am treating the motion as one for summary judgment under Rule 56.

Gonzalez' counsel asserts the need for discovery, presumably brief depositions of Jose and/or Romeo Gonzalez. Gonzalez' counsel is to file a substantiated request under Rule 56(f) if he needs more than thirty (30) days for his discovery. Otherwise, the parties are each given forty-five (45) days to present all material pertinent to the motion. Supplemental memos should also address the applicability of the Doctrine of Judicial Admissions.

**SO ORDERED.**

  
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James R. Muirhead  
United States Magistrate Judge

Date: May 14, 2009

cc: Seth R. Aframe, Esq.  
David H. Bownes, Esq.  
Stanley W. Norkunas, Esq.  
Romeo Lee Gonzalez, *pro se*